

§ 1209.26 Failure to appear.

Failure of a respondent to appear in person at the hearing or by a duly authorized representative of record constitutes a waiver of respondent's right to a hearing and is deemed an admission of the facts as alleged and consent to the relief sought in the notice. Without further proceedings or notice to the respondent, the presiding officer shall file with the Director a recommended decision containing the Agency's findings and the relief sought in the notice.

§ 1209.27 Consolidation and severance of actions.

(a) *Consolidation.* On the motion of any party, or on the presiding officer's own motion, the presiding officer may consolidate, for some or all purposes, any two or more proceedings, if each such proceeding involves or arises out of the same transaction, occurrence or series of transactions or occurrences, or involves at least one common respondent or a material common question of law or fact, unless such consolidation would cause unreasonable delay or injustice. In the event of consolidation under this section, appropriate adjustment to the pre-hearing schedule must be made to avoid unnecessary expense, inconvenience, or delay.

(b) *Severance.* The presiding officer may, upon the motion of any party, sever the proceeding for separate resolution of the matter as to any respondent only if the presiding officer finds that undue prejudice or injustice to the moving party would result from not severing the proceeding and such undue prejudice or injustice would outweigh the interests of judicial economy and expedition in the complete and final resolution of the proceeding.

§ 1209.28 Motions.

(a) *In writing.* (1) Except as otherwise provided herein, an application or request for an order or ruling must be made by written motion.

(2) All written motions must state with particularity the relief sought and must be accompanied by a proposed order.

(3) No oral argument may be held on written motions except as otherwise directed by the presiding officer. Written

memoranda, briefs, affidavits, or other relevant material or documents may be filed in support of or in opposition to a motion.

(b) *Oral motions.* A motion may be made orally on the record, unless the presiding officer directs that such motion be reduced to writing, in which case the motion will be subject to the requirements of this section.

(c) *Filing of motions.* Motions must be filed with the presiding officer and served on all parties; except that following the filing of a recommended decision, motions must be filed with the Director. Motions for pre-trial relief such as motions *in limine* or objections to offers of proof or experts shall be filed not less than 10 days prior to the date of the evidentiary hearing, except as provided with the consent of the presiding officer for good cause shown.

(d) *Responses and replies.* (1) Except as otherwise provided herein, any party may file a written response to a non-dispositive motion within 10 days after service of any written motion, or within such other period of time as may be established by the presiding officer or the Director; and the moving party may file a written reply to a written response to a non-dispositive motion within five days after the service of the response, unless some other period is ordered by the presiding officer or the Director. The presiding officer shall not rule on any oral or written motion before each party with an interest in the motion has had an opportunity to respond as provided in this section.

(2) The failure of a party to oppose a written motion or an oral motion made on the record is deemed as consent by that party to the entry of an order substantially in the form of the order accompanying the motion.

(e) *Dilatory motions.* Frivolous, dilatory, or substantively repetitive motions are prohibited. The filing of such motions may form the basis for sanctions.

(f) *Dispositive motions.* Dispositive motions are governed by §§1209.34 and 1209.35 of this part.

§ 1209.29 Discovery.

(a) *General rule.* (1) *Limits on discovery.* Subject to the limitations set out in paragraphs (a)(2), (b), (d), and (e)